

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AR BUTUS BIOPHARMA.
CORPORATION, et al,
Plaintiffs,
vs. Courtroom 17-A
MODERNA, INC., et al, 601 Market Street
Defendants. Philadelphia, Pennsylvania 19106
. Thursday, June 12, 2025

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE MITCHELL S. GOLDBERG
UNITED STATES DISTRICT COURT CHIEF JUDGE

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MODERNA, INC.

1 (Proceedings commence at 9:33 a.m.)

2 THE COURT: All right. This is the Arbutus v.
3 Modera matter.

4 A couple of discovery things to discuss. And the
5 first one would be the, I think, outstanding issue regarding
6 Dr. Schuster.

7 Excuse me one second.

8 (Court and court personnel confer)

9 THE COURT: So let me just re-acclimate because we
10 had a little momentum, and I got sidetracked.

11 Arbutus -- Dr. Schuster is Arbutus' expert. He was
12 in deposition in April and indicated that he conducted an
13 earlier series of tests on the accused product that was --
14 according to Moderna, was not disclosed, it was in the
15 original expert reports.

16 So, for simplicity's sake, he has his opinions, his
17 opinions are based on testing. I'm going to call that "level
18 one." And then, to prepare for the testing, he did -- or put
19 together earlier tests, which are called "level two." And I
20 think Moderna is saying well, we don't know, really, much
21 about how he put his level one testing together, so we want
22 to get into level two, I think it -- I think more properly
23 referred to as "method development feasibility tests."

24 So the rub becomes should there be more discovery
25 on that. And Moderna listed five areas of further

1 information. I think I found Number 2 to be too broad, all
2 documents relating to -- including any methods resulting in
3 samples, testing of which Dr. Schuster or Coriolis is aware.

4 And I think we talked about maybe there was some
5 flexibility with Arbutus with a discrete deposition of a
6 couple of hours would be appropriate, with the narrowing of
7 documents beforehand.

8 And then there was the issue of further reports,
9 which I think Moderna wanted to put together after the
10 deposition.

11 So I forgot to acknowledge the attorneys. Good
12 morning.

13 (Laughter)

14 THE COURT: So do I have that right? And do you
15 want to identify yourselves for the record? Arbutus first.

16 MR. HOESCHEN: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. HOESCHEN: Nate Hoeschen for plaintiffs, and
19 I'm just doing the identification portion.

20 THE COURT: Sure.

21 MR. HOESCHEN: With me at counsel table, on behalf
22 of Genevant, we have, from Williams & Connolly, David Berl,
23 Matt Lachman, and Shaun Mahaffy.

24 Just behind them, on behalf of Arbutus, from
25 Morrison & Foerster, we have Eric Wiener.

1 And with us from the client, we have Special
2 Counsel for Genevant Lindsay Androski and President and Chief
3 Legal Office Pete Zorn.

4 THE COURT: Good morning.

5 Do I have -- before we go to the other side, did I
6 capture the discovery issue correct?

7 MR. BERL: I believe so, Your Honor.

8 THE COURT: Okay.

9 Good morning.

10 MR. EGAN: Good morning, Your Honor. Brian Eagan
11 from Morris Nichols on behalf of Moderna. Joining me at
12 counsel table from Kirkland & Ellis are Pat Carson and Mark
13 McLennan. And also joining us this morning is in-house
14 counsel from Moderna Lauren Rabinovic.

15 THE COURT: Good morning.

16 Did I capture the discovery issue correctly, maybe?

17 MR. MCLENNAN: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. MCLENNAN: Yes.

20 THE COURT: All right. Have you made any progress?
21 Do you want to suggest -- Arbutus' counsel is shaking his
22 head no. So is that right? Do you want me to make some
23 rulings and hear further argument? I mean, I have some
24 suggestions. But do you have an agreement or not?

25 MR. MCLENNAN: No, we do not have an agreement,

1 Your Honor.

2 THE COURT: Okay. Okay. Well, so let me talk to
3 Arbutus' counsel.

4 Do you -- are you objecting across the board that
5 you don't have to do any further discovery?

6 MR. BERL: Yes, Your Honor.

7 THE COURT: Okay. I disagree with that, so --
8 maybe I shouldn't be so -- I shouldn't jump to that
9 conclusion so quickly.

10 I preliminarily disagree because I don't understand
11 if your expert is going to rely on certain testing or
12 methodology that he engaged in that allowed him to do testing
13 that forms the basis of his opinion. Why isn't the other
14 side allowed to understand how that occurred? So I can -- I
15 was trying to think of a more simple example, and the one I
16 thought of -- and it may not be applicable, but I'll posit it
17 anyway.

18 So let's say that the issue in the case is what's
19 caused a fire. And commonly, in fire cases -- I used to know
20 the name of this -- gas chromatogram, a gas chromatogram
21 tests whether there was accelerant, and that there's been a
22 lot of litigation over the reliability of the gas
23 chromatogram. So why wouldn't -- if the basis of an opinion
24 the fire was caused by fill-in-the-blank, let's say an
25 accelerant, what's the basis of that opinion, Mr. Expert?

1 Well, this, this, and this, and the gas chromatogram. To me,
2 the other side gets to find out as much information as they
3 deem appropriate about the reliability of the gas
4 chromatogram.

5 So why is this different?

6 MR. BERL: I don't believe it is, Your Honor. I
7 think that's a perfectly useful analogy to use.

8 And so the gas chromatogram testing -- in this
9 case, it's a different technique, of course, but the actual
10 testing that Dr. Schuster relied on, his actual method and
11 technique that he used to test their samples, that he put in
12 the report, they've received all of the documents about his
13 development of that method. It was a long appendix to the
14 report --

15 THE COURT: "All of the documents." Be more
16 specific.

17 MR. BERL: Sure. All of the testing of -- you
18 know, all of the, what they call "method development." So
19 what they do, for example -- because the -- what matters here
20 is the concentration of the various lipids in Moderna's
21 product, so you have to do what's called "method
22 development." And so one way of doing that is you put into
23 the machine known quantities of a chemical, let's say one of
24 their lipids. And you say I know that this is .1, and so
25 what signal is it giving. And then I know that I put in .2,

1 and what signal is it giving me. It's got to be linear, so
2 that then, if I do .3, it should be 3 times as much as .1, in
3 terms of the signal. That way, when I get a signal from
4 testing Moderna's product, I can tell the concentration
5 because I've created this method that basically creates a
6 linear relationship between the signal I get out of the
7 machine and the concentration of the particular chemical that
8 I'm looking for.

9 And so that's the method that he developed. And he
10 produced all of the documents and explained in excruciating
11 detail -- it will put you to sleep to read that appendix to
12 the report before your ten percent of the way through -- how
13 he developed that method. All of that was given to them with
14 his report. They didn't have to ask for it. We gave them
15 all of it.

16 This material that they're asking for is the
17 preliminary testing. Does the machine work at all? Does the
18 machine work at all for this purpose? Do you have to turn
19 the knobs on this way? Do you have to use this kind of
20 chemical or that kind of chemical? This is the initial sort
21 of buildup, just to make sure that the machine is working
22 correctly and that you have the parameters, right?

23 THE COURT: Suppose --

24 MR. BERL: Before you do --

25 THE COURT: Suppose --

1 MR. BERL: -- the method --

2 THE COURT: -- the machine --

3 MR. BERL: -- development.

4 THE COURT: -- wasn't working correctly. Isn't
5 that information that Moderna is entitled to?

6 MR. BERL: Well, if the machine wasn't working
7 correctly, then he couldn't go on to the method development
8 that he did --

9 THE COURT: Suppose --

10 MR. BERL: -- and actually --

11 THE COURT: -- the machine was set up incorrectly.
12 Isn't that information Moderna was entitled to?

13 MR. BERL: The -- if the machine was set up
14 incorrectly when it did the testing that Dr. Schuster relied
15 on, absolutely, they're entitled to that. The method
16 development documents -- and there are reams of them that
17 they got -- would reflect that. That's the testing that
18 shows okay, I've developed a reliable method, so, when I get
19 a reading out of that machine that says .56321, that means
20 you have this amount of the lipid in your sample.

21 THE COURT: Uh-huh.

22 MR. BERL: That they got all of.

23 This is just the testing to show and does this
24 parameter work, do I want to use this, do I want to use that.
25 He either developed a reliable method that tells you whether

1 the accelerant was used or he didn't. That method they have
2 in full and all of the documents about it. They examined him
3 in gross detail about that method. Their own experts
4 responded to the reports.

5 Just to be clear, when their experts responded to
6 Dr. Schuster's report -- and they have two experts responding
7 to his report, both Dr. Prud'homme and Dr. Fenton, scores and
8 scores of pages of expert reports about this -- they never
9 said -- they never said I don't know whether the machine was
10 set up right, I need more information, I need the earlier
11 testing, too, to see whether the machine works at all. They
12 didn't suggest that they couldn't respond or had difficulty
13 responding because they didn't have enough.

14 Moderna didn't say to us, when they first received
15 the report with all this method development testing, we need
16 more, we want more. They waited four months --

17 THE COURT: Suppose --

18 MR. BERL: -- to ask for this.

19 THE COURT: Suppose I would tell you I'm 80 percent
20 persuaded -- 85 percent persuaded by your argument that this
21 is unnecessary -- my word, not yours. What's the harm of a
22 two-hour deposition in a case with the stakes this high?
23 What's your prejudice?

24 MR. BERL: The ultimate prejudice -- and I assume
25 we're going to talk about this more later today -- is we want

1 this case tried as quickly as possible.

2 THE COURT: I know, you've made that clear.

3 MR. BERL: And --

4 THE COURT: We're not -- the trial date is not
5 going to happen because you also want -- what was the trial
6 date that I postponed?

7 MR. BERL: September 29th.

8 THE COURT: Okay. So you also want Dauberts and
9 motions for summary judgment, so I have other cases on my
10 docket; this is not my only case, and you can't have it both
11 ways. So the case is not -- if you want all that litigation
12 to happen -- and I understand plaintiffs want cases to go to
13 trial, I don't fault you for pressing that. But you can't
14 have it all. You can't have extensive Daubert litigation and
15 summary judgment litigation and trial preparation -- and we
16 haven't even talked about motions in limine and jury
17 instructions -- in between now and September. It's
18 impossible, even if you were my only case.

19 MR. BERL: I understand that, Your Honor. We are --
20 -- and we understand that and appreciate that.

21 THE COURT: So let's go back --

22 MR. BERL: We are --

23 THE COURT: Let's go back to my question --

24 MR. BERL: Sure.

25 THE COURT: -- which was: If I am persuaded -- and

1 you've been persuasive -- that this is just sort of overkill
2 -- my word, not yours -- beyond that you want this case to go
3 to trial sooner, what is a two-hour deposition and production
4 of a discrete amount of documents? How does that prejudice
5 you?

6 MR. BERL: If it's not going to have any effect on
7 the schedule, Your Honor, which is --

8 THE COURT: It's not.

9 MR. BERL: -- really what matters, then -- and
10 that's going to resolve this, then that's fine with us.

11 THE COURT: Thank you.

12 MR. BERL: I do want --

13 THE COURT: Thank you.

14 MR. BERL: -- to say one --

15 THE COURT: Thank you for --

16 MR. BERL: -- more thing, though.

17 THE COURT: -- being reasonable about that.

18 MR. BERL: And can I say one more thing, though --

19 THE COURT: Sure, sure.

20 MR. BERL: -- in response to your prior statement -

21 -

22 THE COURT: Yeah.

23 MR. BERL: -- that we can't have it all? We
24 understand we can't have it all. And what I'm here to tell
25 you today is that we are prepared to do what it takes to get

1 this case tried in 2025. And if that means filing fewer
2 summary judgment motions --

3 THE COURT: I think that --

4 MR. BERL: -- or fewer Daubert --

5 THE COURT: I think that that's very doable. Okay?

6 Okay. Okay. So I'm going to -- unless you want to
7 say something, I'm going to allow some discrete discovery on
8 Dr. Schuster, but it's going to be discrete and it's not
9 going to be everything that you asked for.

10 So, on the issue of the -- and I'll figure that out
11 and issue an order. On the issue of the report, I'm going to
12 guess -- and I don't want to speak for Moderna, but they want
13 a do-over report, I think, because they don't want to be in a
14 situation at trial where -- there's a lot of levels here --
15 should they find something in this discrete discovery of
16 Schuster that they believe is relevant to their case and
17 admissible and they want to bring it out, they don't want the
18 objection oh, it's not in some report. Is that your problem?
19 Did I read your mind correctly or not?

20 MR. MCLENNAN: Yes, generally, Your Honor.

21 I just wanted to make one correction that -- I
22 think it's -- it addresses to addresses your question about -
23 -

24 THE COURT: Uh-huh.

25 MR. MCLENNAN: -- what are our experts actually

1 trying to do. So our experts analyzed the method that was
2 developed by Dr. Schuster. And so he has -- in Exhibit E to
3 plaintiff's opposition, he has the Paragraph 48, where he
4 says this is the method I came up with and this is how I
5 developed it, and there's this method qualification report
6 attached to the report. That was the report that Mr. Berl
7 was referring to.

8 So we thought that was it when we went into the
9 deposition. We examined him about it. Our experts analyzed
10 --

11 THE COURT: You did --

12 MR. MCLENNAN: -- that and --

13 THE COURT: -- hear me --

14 MR. MCLENNAN: -- had critiques.

15 THE COURT: You did hear me rule in your favor,
16 right?

17 MR. MCLENNAN: Yes, Your Honor. Thank you.

18 THE COURT: Okay.

19 MR. MCLENNAN: It's -- you're right. It's so that
20 our experts can actually address the real method that was
21 developed earlier.

22 THE COURT: I ruled in your favor.

23 MR. MCLENNAN: Okay.

24 THE COURT: I appreciate --

25 MR. MCLENNAN: Thank you, Your Honor.

1 THE COURT: I appreciate you getting my back, but
2 I'm letting you do the dep, I'm letting you do the discovery.

3 So am I right about why you want the report?

4 MR. MCLENNAN: Yes, Your Honor.

5 THE COURT: Okay. All right. So I'll ask -- Thank
6 you. I'll ask Arbutus' counsel what's the -- if -- and I --
7 again, I'm going to say thank you for your reasonableness in
8 your presentation. I hear what you're saying, all principled
9 arguments. And thank you for being -- a reasonable response.

10 I mean, I think that their concern is -- they're
11 being overly cautious, but I think it's prudent. And they
12 don't want to be in a situation where they want to bring this
13 information out and you stand up and object and say it's not
14 in their report.

15 MR. BERL: Yeah. I guess the question is: Where
16 does this end? I mean, someone, at some point, always has to
17 go last and doesn't get a response then.

18 THE COURT: It's going to end, it's going to end.

19 MR. BERL: I hope so.

20 THE COURT: Yes, it is.

21 MR. BERL: And so, for example, they get another
22 report where they say on, now we learned X. Do we get to
23 examine that expert about the report? I mean --

24 THE COURT: No.

25 MR. BERL: -- generally -- okay. Again, I want the

1 trial as quickly as possible --

2 THE COURT: I understand.

3 MR. BERL: -- so I don't want an examination. I --
4 you know, if they're going to put in a report that is really,
5 truly limited to the particular issues they learned about in
6 this limited discovery Your Honor is ordering, that's one
7 thing. What I don't want is sort of a recapitulation and
8 going back now, after these people have been deposed, and
9 plugging up all the holes.

10 THE COURT: I have noted your very principled
11 position that the case needs -- the discovery needs to end
12 and we need to move into the next phase, noted, noted. And I
13 will do my best to balance that principled request with
14 making sure everyone is prepared. Okay? So noted.

15 Okay. So we did -- we had some discussions about
16 narrowing, I've issued that order, that issue is resolved.

17 I looked at the summary judgment requests. Unless
18 someone wants to talk about it, I thought that your requests,
19 everyone requests, seemed reasonable, the issues that you
20 want to litigate on summary judgment, that seems right to me.
21 I don't have a quibble with what you've suggested. We can
22 talk about that, if you want.

23 I think, as it relates to Dauberts -- I forget
24 which side said let's just narrow it to three. And my -- I
25 go back to -- I'm not trying to be argumentative; I just want

1 to talk it through. But I go back to my suggestion of well,
2 how do you know -- who suggested three? Was that you, was
3 that Arbutus? Yeah.

4 My question would be -- there's so much discover --
5 there's so much information about the experts with -- I think
6 I determined -- I forget how many thousands of pages. Don't
7 you want to know what they're going to introduce at trial of
8 these thousands of pages before you raise your Daubert
9 issues? So, when you say three, it sort of seems to me like
10 you're -- you don't even know, of these thousands of pages,
11 what's actually going to be put in front of a jury. So why
12 just pick three out of the air?

13 Why is my suggestion -- and I'm not saying it's the
14 best way -- that we suss out, of all the expert information,
15 what's actually going to go in front of a fact-finder, and
16 then make the Daubert decision? Why is that not a good way
17 to do it?

18 MR. BERL: I actually think, subject to summary
19 judgment practice, that we have a pretty good idea of what
20 the other side is going to present at trial and which
21 arguments we're going to present at trial.

22 THE COURT: Uh-huh.

23 MR. BERL: So I'm not sure building in another step
24 would be productive. Let me just explain why.

25 THE COURT: And that goes to your -- it builds in

1 another step and delays our picking a jury again.

2 MR. BERL: And let -- yeah. And let me explain why
3 we would propose lopping off two of the Dauberts, is that
4 there's some experts that served reports about this so-called
5 "1498 issue," the government contractor defense. Now both
6 sides have agreed that they're going to move for summary
7 judgment on that issue. To be perfectly candid, we expect
8 that the Court will resolve that issue in our favor of
9 Moderna's favor before trial.

10 Out of an abundance of caution, I think, both sides
11 put in expert reports about Section 1498; first, Moderna, and
12 then, in response, we obviously needed someone to respond to
13 what they were saying.

14 It seems very, very unlikely that those experts
15 ever will testify at trial because Your Honor likely will say
16 that Moderna wins on 1498 or we win on 1498, so that those
17 witnesses will probably never see the witness chair. And so
18 it seemed to us that it's somewhat wasteful to be filing
19 Daubert motions about experts on issues like 1498 --

20 THE COURT: Should we wait --

21 MR. BERL: -- that the Court is --

22 THE COURT: -- until after --

23 MR. BERL: -- going to resolve.

24 THE COURT: -- rulings on summary judgment to
25 decide how we're going to deal with Dauberts?

1 MR. BERL: Certainly, as to those two, I think
2 they'll go away, and so I don't think there will be much to
3 decide. As to the others, I don't think there are all that
4 many Daubert motions that remain. It would seem most
5 efficient to do that at the same time as summary judgment.
6 But the 1498 experts just seem to be somewhat wasteful, and
7 that's why --

8 THE COURT: Okay.

9 MR. BERL: -- we raised that issue.

10 THE COURT: Yeah, got it. I don't think we all
11 need to wring our hands too much over this issue; it will
12 work out one way or another.

13 What's your view?

14 DR. CARSON: Good morning, Your Honor.

15 THE COURT: Good morning.

16 DR. CARSON: Pat Carson.

17 THE COURT: Ms. Carson.

18 DR. CARSON: It does seem like summary judgment
19 could narrow what the Dauberts are, in addition to what Mr.
20 Berl just referred to, those were the experts that relate to
21 1498. So, if the summary judgment is decided on the 1498,
22 then those two Dauberts may not be necessary.

23 Similarly, if the summary -- if the summary
24 judgment motion on our doctrine of equivalence is decided,
25 it's going to obviate a portion of their summary -- their

1 Daubert on Dr. Prud'homme, and the same thing with their
2 summary judgment on enablement will obviate part of their
3 Daubert on mister -- Dr. Prud'homme.

4 So we do think that the Daubert motions will be
5 impacted by the Court's decisions on summary judgment. And
6 you know, subject to what the Court wants to do, there are
7 reasons to stage it, so that the summary judgment happens
8 first, and then the Daubert happens second.

9 THE COURT: Okay. Thank you.

10 All right. I think I have enough information to
11 issue the next order on how we're going to do this.

12 Anything else you want to talk about? I sort of --
13 we haven't been here very long, and I sort of feel bad asking
14 you to come in to court, but we could have done this on the
15 phone. But I think more gets done in person, though, anyway.

16 MR. BERL: Yeah, I agree with that --

17 THE COURT: Is there anything --

18 MR. BERL: -- Your Honor.

19 THE COURT: -- you want to talk about?

20 MR. BERL: Yeah, Your Honor, if I may.

21 THE COURT: Yeah.

22 MR. BERL: And I don't want to try Your Honor's
23 patience.

24 THE COURT: You're not --

25 MR. BERL: But I think --

1 THE COURT: -- trying my patience --

2 MR. BERL: -- it's important --

3 THE COURT: -- not at all.

4 MR. BERL: I think it's important for me to explain
5 to Your Honor why the trial date is so paramount for us.
6 This is not simply a matter of a plaintiff who wants the
7 trial date --

8 THE COURT: Sure.

9 MR. BERL: -- as soon as possible. That's the
10 typical case. That's not what's going on here.

11 THE COURT: Okay. Tell me.

12 MR. BERL: I just want to be clear, when we sued
13 Moderna back in 2022, they had \$20 billion of cash. Now they
14 have \$6 billion of cash, and it is bleeding at a rate of \$1
15 billion per quarter. And you don't have to ask me about it.
16 This is an article from Barron's, a well known financial
17 publication, that came out on May 29th, just two weeks ago,
18 and it is entitled "Moderna is in Peril, It May Run Out of
19 Cash."

20 What we have here is a case where discovery has
21 shown their own documents submitted to the FDA show
22 infringement on a massive scale. They produced samples
23 pursuant to Your Honor's order; we then tested them through
24 Dr. Schuster. That testing showed that every lot we tested,
25 67 out of 67, have particles that infringe our claims. They

1 infringed their first version of the vaccine, the second
2 version of the vaccine; it all infringed.

11 THE COURT: Right.

12 MR. BERL: I think Your Honor has broad discretion

13 | --

14 THE COURT: Yes.

15 MR. BERL: -- to set whatever --

16 THE COURT: Broad.

17 MR. BERL: -- trial date he pleases, and that's
18 essentially unappealable, so I don't think you get appellate
19 court decisions --

20 THE COURT: Yeah.

21 MR. BERL: -- analyzing that --

22 THE COURT: I didn't --

23 MR. BERL: -- sort of issue.

1 circuit precedent.

2 MR. BERL: Yes.

3 THE COURT: I meant it just seems like a bit
4 unusual. I've never --

5 MR. BERL: I --

6 THE COURT: -- heard a request like this.

7 MR. BERL: Well, I --

8 THE COURT: But this is an unusual case, thought.

9 MR. BERL: It is an unusual case.

10 THE COURT: Yeah.

11 MR. BERL: I thin these are unusual circumstances.

12 Our damages demand in this case is \$5 billion. And so, in
13 our view, Moderna is, in a sense, frittering away that money
14 that we think we are entitled to, and it won't be there, and
15 so we sort of see this as justice delayed is justice denied.

16 We asked Moderna what trial dates it has available.
17 Their response, essentially, was that they have no dates
18 available in the six months after the original trial, as a
19 result of trial counsel --

20 THE COURT: I will --

21 MR. BERL: -- conflicts.

22 THE COURT: I will give very serious consideration
23 to -- I don't want to commit. I will give very serious
24 consideration to a firm trial date in 2025.

25 MR. BERL: Okay, Your Honor. And just so Your

1 Honor understands, we've fashioned --

2 THE COURT: I think --

3 MR. BERL: -- a draft --

4 THE COURT: -- that's likely --

5 MR. BERL: -- a draft --

6 THE COURT: -- very likely.

7 MR. BERL: -- schedule --

8 THE COURT: Uh-huh.

9 MR. BERL: -- that lands on a trial on December 1st
10 of 2025. That date wasn't picked out of thin air. We got
11 all of their trial counsel's conflicts. They don't have any
12 trials between December 1st and December 12th, that two-week
13 period. We're, obviously, free to do it during that two-week
14 period. They have -- they say their trial counsel has trials
15 before or after. We don't even know whose trial conflicts
16 they are; they have nine partners who have entered
17 appearances in this case, so --

18 THE COURT: I think I just read an article that the
19 Kirkland firm is the largest firm in the world.

20 MR. BERL: They are a large and --

21 THE COURT: They're cringing when I --

22 MR. BERL: -- capable and prestigious firm. It's
23 not possible that they're --

24 THE COURT: When I was --

25 MR. BERL: -- not able --

1 THE COURT: -- practicing --

2 MR. BERL: -- to try --

3 THE COURT: -- at a --

4 MR. BERL: -- this case.

5 THE COURT: -- not nearly the size of those firms,

6 I used to hate when judges and/or clients would say to me,

7 you know, I'm not available, they go, well, you're at a firm

8 of 300 lawyers, so get someone else to do it. So I'm sure

9 the Kirkland lawyers don't like me --

10 MR. BERL: Then --

11 THE COURT: -- don't like hearing that.

12 MR. BERL: That's -- well --

13 THE COURT: They -- you should --

14 MR. BERL: -- taken --

15 THE COURT: The Kirkland lawyers should anticipate

16 that this case is going to be tried in 2025. I don't -- I

17 haven't figured out when and how, but that's likely coming.

18 Okay?

19 MR. BERL: Thank you, Your Honor.

20 THE COURT: Okay.

21 DR. CARSON: Your Honor --

22 THE COURT: Yes?

23 DR. CARSON: -- can I just make a couple of
24 comments?

25 THE COURT: Sure.

1 DR. CARSON: I -- first, I didn't realize that we
2 were going to be arguing summary judgment and infringement,
3 but Mr. Berl's diatribe, they're not asking to file summary
4 judgment of infringement.

5 In terms of their interest in having a trial date
6 right away, I think it's completely undermined by the fact
7 that they have asked us to reopen fact discovery, so that
8 they could get discovery on the issue that was raised in your
9 chambers during the last hearing.

10 THE COURT: In chambers?

11 DR. CARSON: During chambers, Mr. McLennan and Mr.
12 Berl came back and told you about an outrageous request that
13 the plaintiffs have made. And now they have asked us to
14 accept service of a subpoena --

15 THE COURT: Excuse me one --

16 DR. CARSON: -- to reopen --

17 THE COURT: Excuse me.

18 DR. CARSON: -- fact discovery.

19 THE COURT: Excuse me one -- excuse me one second.
20 Let's go off the record and turn on the white noise and come
21 to sidebar, please.

22 (Off the record discussion at sidebar at 10:00 a.m.)

23 (At 10:02 a.m.)

24 THE COURT: Okay. So I interrupted Kirkland's
25 lawyer. Were you -- did we finish?

1 DR. CARSON: Your Honor, we were reminding you of -

2 -

3 THE COURT: Yes.

4 DR. CARSON: -- what the issue was.

5 THE COURT: Yes.

6 DR. CARSON: And my point is, is that asking to
7 reopen fact discovery into that completely irrelevant issue
8 is completely at odds with what Mr. Berl is saying, we're in
9 a hurry to get to trial.

10 THE COURT: Well, your -- okay. Understood. I'm
11 doing my best to balance everyone's needs here --

12 DR. CARSON: Thank you.

13 THE COURT: -- so I understand your position.

14 Okay. I think I have enough information to set up
15 the next phase of this. And unless there's anything else,
16 we're good?

17 MR. BERL: I suppose I --

18 THE COURT: We're here, so let's chitchat about
19 whatever you want.

20 MR. BERL: I didn't get an opportunity to respond
21 to what Ms. Carson just said about --

22 THE COURT: Go ahead.

23 MR. BERL: -- the outstanding discovery issue --

24 THE COURT: Yeah.

25 MR. BERL: -- that we had raised, but I'm loathe to

1 do that in open court because they seem to think it's very
2 sensitive and confidential.

3 THE COURT: The issue is resolved. I didn't hear
4 that there needs to be any -- regarding the issue we talked
5 about at sidebar, I understood it to be a resolved issue, and
6 it's moot. Am I right?

7 MR. BERL: Not in our view, Your Honor.

8 THE COURT: Okay.

9 MR. BERL: And I --

10 DR. CARSON: Your Honor, as far as we know --

11 THE COURT: Well, I don't want to -- I don't want
12 to -- I don't want to air things out -- well, I don't want
13 this to be a sidebar situation. If someone wants to file a
14 motion that they believe is in good faith, then file it.
15 We're not going to do this in chambers or at sidebar. Okay?

16 MR. BERL: Very, very well understood, Your Honor.
17 Thank you.

18 THE COURT: Okay. All right. Okay. Nice to see
19 everyone. Thank you.

20 THE COURT OFFICER: All rise.

21 (Proceedings concluded at 10:04 a.m.)

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1 CERTIFICATION

2 I certify that the foregoing is a correct
3 transcript from the electronic sound recording of the
4 proceedings in the above-entitled matter to the best of my
5 knowledge and ability.

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11 _____

June 18, 2025

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